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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/699,377

10/31/2003

Jens Mogens Nielsen

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20999 7590 12/30/2009
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EXAMINER

PADEN, CAROLYN A

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

12/30/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/699,377	Applicant(s) NIELSEN ET AL.	
	Examiner Carolyn A. Paden	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 October 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44, 47 and 49 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-44, 47 and 49 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9-17-09</u> . | 6) <input type="checkbox"/> Other: _____ |

The rejection of the claims over Loh and Goaker has been withdrawn in response to applicants' arguments. On updating the file another reference was discovered so prosecution of this application continues.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-44, 47 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Woldhuis (0403030) in view of Mayfield (5,853,778).

Woldhuis discloses a coating for cheese made of wax and a wax-like fat of the composition of the claims (abstract, page 3, lines 5-23 and claims 1-2). The composition was applied to cheese and found to prevent or reduce the movement of water from the product (page 3, lines 24-32). Wax sources applied are shown in the Tables. Both short and long-chained fatty acids are esterified to the glycerol of the molecule in the chain-length specified by the claims. Although branched fatty acids are not mentioned, it would have been obvious to expect branched and straight chain fatty acids to be included in a fatty acid of a chain length of more than 4.

Although the molar ratio of ingredients of claims 17-21 is not mentioned, the ratio would have been expected from the triglyceride description at page 3, lines 15-18. The inclusion of sorbitan esters (claim 39) is suggested in Woldhuis in Table A, line 15. Citric acid esters are mentioned in Table D. It is appreciated that the limited amount of these auxiliary ingredients is not mentioned (claims 41-44) but it is obvious from the different coating mixtures prepared that one of ordinary skill in the art would be able to adjust the amount of auxiliary ingredient according to the particular coating properties desired in the film. It is appreciated that the interesterification method by which the fat is made is not mentioned in the reference, but the claims are directed to the product and not to the method by which it is made. Further one of ordinary skill in the art would have expected a triglyceride containing a lot of short-chain fatty acids would have been made by interesterification because this type of triglyceride is not typically found in nature. The claims appear to differ from Woldhuis in the use of the coated cheese product in a multi-component foodstuff. First cheese is known to be consumed in sandwiches. Mayfield teaches using edible films as moisture barrier for use in sandwiches to separate dry foods from wet or sticky foods (abstract and column 6, lines 7-19). In the

background of the invention various edible coatings are suggested that include wax and short-chain fatty acids without specifically mentioning Woldhuis. It would have been obvious to one of ordinary skill in the art to use the coating of Woldhuis as an edible film in a cheese sandwich in order to preserve the sandwich and prevent the bread in the sandwich from getting soggy. In this case the cheese is the high moisture food.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached by dialing 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Carolyn Paden/

Primary Examiner 1794